



DEFENSE FINANCE AND ACCOUNTING SERVICE

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DFAS-HQ/FMM

FEB 27 1998

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- CLEVELAND CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- DENVER CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- INDIANAPOLIS CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
- KANSAS CITY CENTER
PROGRAM MANAGER, DEFENSE JOINT MILITARY PAY SYSTEM

SUBJECT: Change to the DoDFMR, Volume 7A, Clarification of
Various Tax Issues to Include Disability Severance Pay,
and Others (DFAS Item G-44)

This is DFAS Interim Change 14-98 to the DoDFMR, Vol 7A.
This change is effective immediately.

We have evaluated your comments on the draft change to the DoDFMR, Vol 7A. The attached final version of the change includes your comments where appropriate. Assignment of an interim change number is your authority to start a procedural modification, if necessary, to facilitate this change. For the Denver Center, use the attached to initiate the formal printed change to the DoDFMR and the interim change.

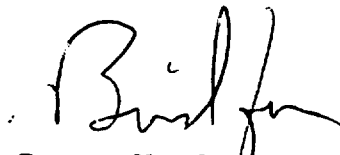
This change provides clarifying language regarding taxability of disability severance pay, and provides a standard policy for reporting of wages to States when a member claims an exemption from withholding based on the State's residency requirements.

As discussed in the DFAS-DE/DG legal opinion (attached) and based upon the regulatory provisions pertaining to disclosure to the States, the wages of a member who claims exemption from withholding should not be reported to a state without the member's consent because it would be difficult to say that such a member is "subject to mandatory withholding."

Some States, such as Missouri, require a member to file a tax return even though the member claims exemption from State tax liability. In these situations, procedures must be established to allow the member to request that his/her wages be reported to the State.

We have determined that this change does require systems' modifications to MCTFS and DJMS.

Our point of contact, Ms. Ann Cook, may be contacted at DSN 327-5059 or Commercial (703) 607-5059. Our FAX number is DSN 332-5271 or Commercial (703) 602-5271.



Roger W. Searce
Brigadier General, USA
Director for Finance

Attachments:

As stated

cc: DASD (MMP) (COMP)
ODGC (F)
DFAS-DE/DG
Service Liaisons
USCG/NOAA/PHS Liaisons

1. Revise paragraph 350404A(3) to read:

"The member has official notification from the Department of Veterans Affairs approving entitlement to disability compensation for the same illness or injury that caused the entitlement to disability severance pay."

2. Renumber the existing subparagraph 440106D as "440106E" and insert a new subparagraph 440106D to read as follows:

"D. Disclosure of Withholding Information. Military members' annual wage and tax information furnished to States (including the District of Columbia) which have a withholding agreement with Treasury must comply with the Privacy Act of 1974. Based upon regulatory provisions pertaining to disclosure to the States, the wages of a member who claims exemption from withholding should not be reported to a State without the member's consent. In lieu of reporting the wages of members who claim exemption from State tax withholding, name, social security number, and the member's claimed basis for exemption is to be provided to the State. This applies to all Services and systems.

3. Revise the bibliography as follows:

For new subparagraph 440106D, add:

"TFM 3-5070"

MAR 18 1993

MEMORANDUM FOR DFAS-DE/FJGC

SUBJECT: Accumulation of Wages in States With Residency Requirements

This is in response to your request for a legal opinion as to whether JUMPS should accumulate State wages for various States if a member does not reside in the State. I apologize for the delay in this response. As I understand your question, you are asking whether wages for a tax year should be accumulated and reported to States that have residency tests under which certain members qualify for exemption from withholding of State income taxes. For the reasons discussed below, it is my opinion that the wages of a member who is exempt from the withholding of State income taxes should not be reported to the member's State of legal residence. However, it is my further opinion that a listing of members claiming exemption from withholding of State income taxes may be provided to the relevant State.

There are certain States, such as New York and Missouri, which set forth residency tests in determining whether an individual is subject to the withholding of income taxes and tax liability. In most cases, the States have indicated that these residency tests apply to military members. If a member believes that he is exempt from the withholding of State income taxes based upon a State residency test, the member files a DD Form 2058-1 to claim exemption from such withholding.

The applicable Treasury regulation provides that:

Annual wage and tax information furnished to taxing authorities must comply with the Privacy Act of 1974. If an agency has not obtained prior written consent of an employee or has not published a routine use in the Federal Register, annual wage and tax information will be furnished under this section only to taxing authorities with whom the Secretary of the Treasury has entered into agreements

The information returns will consist of the name, address, social security number, wages (as defined in 26 U.S.C. 3401(a) of the Internal Revenue Code), and the amount of tax withheld, if any.

Disclosure to States. In the case of an agreement with a State, agencies will provide the indicated information with respect to those employees who (1) are subject to mandatory withholding, or (2) may elect withholding under a State law.

I TFM 3-5070.10.

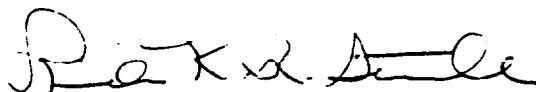
Based upon the regulatory provisions pertaining to disclosure to the States, it is my opinion that the wages of a member who claims exemption from withholding should not be reported to a State without the member's consent because it would be difficult to say that such a member is "subject to mandatory withholding." In this regard, I note that some States, such as Missouri, require a member to file a tax return even though the member claims exemption from State tax liability by application of the State's definition of a resident for income tax purposes. In this situation, a member may wish to have his income reported to a State and I believe procedures should be established to allow a member to request that his wages be reported to a State.

However, the Treasury regulations authorize providing information about employees claiming exemption from State income tax withholding to the appropriate official.

[T]he agency may provide, to the designated official of the State, city, or county imposing the tax, information concerning employees who claim to be exempt from the tax. Such information will include the name, social security number, and the claimed basis for exemption.

I TFM 3-5070.20. If such information is not currently provided to the appropriate States on a routine basis, then I recommend pursuing the matter with DFAS-HQ/FMM so that it can be handled consistently throughout DFAS.

Should you have additional questions concerning this matter, please contact the undersigned or, alternatively, Mr. Jim Vonhof, at extension 6-7521.



Linda K. R. Stornelli
Associate General Counsel
Military Law Division
Office of General Counsel

cc: DFAS-HQ/FMM
(Denise Van Peursem)